

ALAMO EXPLORATION CO.

IBLA 89-29

Decided April 25, 1989

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, rejecting future interest oil and gas lease offer. NM NM 69677.

Set aside and remanded.

1. Oil and Gas Leases: Future and Fractional Interest Leases

A decision to reject an offer for a future interest oil and gas lease on the basis of a conflicting future interest lease may be set aside where the offer was accompanied by evidence of the offeror's title to the present operating rights as required by regulation at 43 CFR 3111.3-2 (1987), which evidence included a release executed by the conflicting lessee as required by the terms of the supplemental agreement to the future interest lease.

APPEARANCES: Edgar C. Morrison, Jr., Esq., San Antonio, Texas, for appellant; Gayle E. Manges, Esq., Field Solicitor, Santa Fe, New Mexico, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE GRANT

This appeal has been brought by Alamo Exploration Company from a decision of the New Mexico State Office, Bureau of Land Management (BLM), dated September 15, 1988, rejecting its noncompetitive future interest oil and gas lease offer, NM NM 69677. The ground for rejection was that the lands were embraced in outstanding future interest oil and gas leases at the time the offer was filed.

Much of the relevant factual background is set forth in the brief of Alamo on appeal. The mineral estate in this land is owned by Thomas Drought et al. until May 10, 1989, pursuant to a reservation in the deed by which the United States acquired title to the land. On that date the mineral fee vests in the United States. Alamo presently holds the oil and gas rights to the land pursuant to a lease issued by the fee owners on July 27, 1987.

Previously, on October 1, 1976, the fee owners of the mineral interest entered into oil and gas leases with Northern Minerals, Incorporated. Based on this lease interest in the oil and gas rights, Northern obtained future interest oil and gas leases (NM NM 30316 and NM NM 30317) from the United States which included the lands embraced in appellant's lease offer. These leases were executed by BLM on January 17, 1978. Thereafter, both the present interest lease and the future interest leases for those lands embraced in Alamo's offer were assigned to George E. Coleman and Claude E. Kennedy. <sup>1/</sup> The assignment of the future interest leases was approved by BLM effective March 1, 1979. No production occurred during the term of the leasehold and on November 3, 1986, Coleman and Kennedy released their interests in the present operating rights to the mineral fee owners. Subsequently, the mineral fee owners executed a new oil and gas lease to Alamo on July 27, 1987. Thereafter, Alamo submitted its future interest oil and gas lease offer for the lands to BLM on August 14, 1987.

By letter dated February 12, 1988, BLM acknowledged receipt of a copy of a release of the present interest oil and gas leases recorded with the county recorder July 20, 1987, and requested Coleman and Kennedy to execute relinquishments of their future interest oil and gas leases. Relinquishments of the leases were filed with BLM on March 1, 1988. Subsequently, BLM issued the decision from which this appeal is brought rejecting appellant's offer as premature in light of the outstanding conflicting future interest leases which were not relinquished until March 1, 1988. <sup>2/</sup>

Alamo contends in its statement of reasons (SOR) for appeal that the conflicting future interest leases (NM NM 30316-A and NM NM 30317-A) effectively terminated when the lessees executed the release of the underlying lease of the present operating rights on November 3, 1986. Appellant points out that a copy of this release was filed as an attachment to Alamo's future interest lease offer. Appellant asserts that the regulations governing future interest lease offers require an offeror to submit evidence of its title to the present operating rights (which Alamo provided) and where this is provided a formal relinquishment of the former future interest lease is not a prerequisite.

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<sup>1/</sup> As a result of the assignment to Coleman and Kennedy of the entire leasehold interest in a portion of the lands embraced in future interest leases NM NM 30316 and NM NM 30317, these conflicting leases were designated NM NM 30316-A and NM NM 30317-A.

<sup>2/</sup> The BLM decision found that the lands are subject to leasing in accordance with the current regulations published in the Federal Register on June 17, 1988. 53 FR 22814. These were published subsequent to enactment of the Federal Onshore Oil and Gas Leasing Reform Act of 1987 (FOOGLRA), P.L. 100-203, 101 Stat. 1330-256 to 1330-263, which requires that lands be first offered for competitive leasing subject to processing of noncompetitive oil and gas lease offers outstanding at the date of enactment. FOOGLRA, || 5102(a), 5106, 101 Stat. 1330-256, 1330-259.

In its answer to the SOR for appeal, BLM contends that appellant did not own all of the present operating rights in the land as required by regulation at 43 CFR 3111.3-1(b) (1987) at the time its offer was filed because of the outstanding future interest oil and gas leases. Hence, BLM asserts the offer was not perfected until the relinquishments were filed on March 1, 1988, at which point the lands were no longer subject to noncompetitive leasing without first seeking competitive bids for the tracts pursuant to 5102(a) of FOOGLRA. BLM further argues that prior to the effective date of the future interest lease the rights of the parties are governed by the supplemental agreement attached to the lease which was executed simultaneously. Section 2 of the agreement requires the lessee to notify BLM of any transfer of present oil and gas operating rights, as well as the future interest lease and supplemental agreement, within 30 days and BLM contends the lessees failed to comply by filing an assignment with BLM. It is argued by BLM that the relinquishment found in the files prior to its letter of February 12, 1988, to Coleman and Kennedy lacked a BLM date-stamp and was not properly filed. BLM contends the lease offer was filed prior to the relinquishment and, hence, was defective and subject to rejection as premature.

In response to an inquiry from counsel for appellant, we have determined to give this appeal expedited consideration in view of the apparent desirability of rendering a decision prior to the vesting of title.

The issue presented is whether a future interest oil and gas lease offer accompanied by evidence of the offeror's title to the present oil and gas operating rights is properly rejected on the basis of an outstanding future interest lease embracing the land where the lessees thereof have not filed a relinquishment directly with BLM. The answer must be found by reference to the terms of the future interest lease, the attached supplemental agreement, and the provisions of the relevant regulations governing future interest leasing.

[1] Issuance of future interest leases for mineral deposits in acquired lands in which the United States is to acquire the mineral rights in the future is authorized by section 5 of the Mineral Leasing Act for Acquired Lands of August 7, 1947:

Where the United States does not own all of the mineral deposits under any lands sought to be leased and which are affected by this chapter, the Secretary is authorized to lease the interest of the United States in any such mineral deposits when, in the judgment of the Secretary, the public interest will be best served thereby; subject, however, to the provisions of section 352 of this title. Where the United States does not own any interest or owns less than a full interest in the minerals that may be produced from any lands sought to be leased, and which are or will be affected by this chapter and where, under the provisions of its acquisition, the United States is to acquire all or any part of such mineral deposits in the future, the Secretary may lease any interest of the United States then owned or to be acquired in the future in the same manner as provided in the preceding sentence.

30 U.S.C. § 354 (1982). The regulations promulgated pursuant to this provision state that a noncompetitive future interest oil and gas lease shall be issued only to an offeror who owns "all or substantially all of the present operating rights in the lands." 43 CFR 3111.3-1(b) (1987). To this end, it is further provided in the regulations that a future interest lease offer shall be "accompanied by a certified abstract of title containing record evidence of the creation of, and offeror's right to, the claimed mineral interest. If the offeror acquired the operating rights under a lease or contract, the offer shall also be accompanied by a copy of such lease or contract." 43 CFR 3111.3-2 (1987). Thus, the Department has recognized that a leasehold should have continuity of term notwithstanding the identity of the lessor might change. The Moran Corp., 101 IBLA 384 (1988); Fritz, Mineral Problems Relating to Acquired Federal Lands, 3 Rocky Mt. Min. L. Inst. 379, 385 (1957); see Placid Oil Co., 9 IBLA 384, 80 I.D. 212 (1973).

During the interim period between issuance of a future interest lease and the vesting of title in the United States, the rights of the parties are governed by the supplemental agreement. 43 CFR 3111.3-4(a) (1987). This agreement contains two provisions relevant to this appeal. Under section 2 the lessee agrees not to transfer the present operating rights which were the basis for issuance of the future interest lease without a concurrent transfer to the same party of the future interest lease and supplemental agreement. Section 2 further provides that within 30 days after execution of such a transfer, three certified copies of the transfer of the future interest lease, supplemental agreement, and present operating rights shall be filed with BLM.

Also relevant to this appeal is section 3 which provides that when the lessee

holds only leasehold or operating rights to the present mineral interests, his obligations under this agreement and the right to hold the future interest lease shall cease and terminate to the same extent that such rights to the present mineral interests are released, surrendered, canceled, or otherwise terminated prior to the expiration of the present mineral interests; and the lessee agrees to furnish to the [BLM] within 30 days after such release, surrender, or cancellation has been executed, three certified copies thereof \* \* \* or to give notice of such termination to the [BLM] within 30 days after it occurs.

Viewing the facts of this case in light of the terms of the supplemental agreement and the relevant regulations, it appears that the lessees of the future interest leases executed a release of their underlying lease of the present operating rights, thus terminating their future interest leases. Further, it appears that BLM was notified by receipt of a copy of the executed release, as a copy appears in each lease file. As noted by BLM, there is no BLM date-stamp on the documents to indicate when they were received by BLM, although it appears they were recorded with the McKinley County Clerk on July 20, 1987, and the photocopies filed with BLM were certified on August 5, 1987. In any event, an additional copy of the release was filed with BLM on August 14, 1987, as part of the supporting documentation to establish title filed with Alamo's lease offer.

Upon the facts of this case, we are unable to agree with BLM that appellant failed to provide evidence of its title to the present operating rights. The lease offer was accompanied by a certificate of title, a copy of a lease to Alamo of the present operating rights, and a copy of a release of the former lease of the present operating rights by the lessees of record. Thus, appellant provided evidence of title to the present operating rights in the land as required by regulation. 43 CFR 3111.3-2 (1987). Further, as required under section 3 of the supplemental agreement, BLM was notified of the release by lessees Coleman and Kennedy of their interest in the present operating rights in the land. Under section 3 of the supplemental agreement, this had the effect of terminating their future interest leases. In this context it appears that it was error to reject appellant's future interest oil and gas lease offer on the ground it was prematurely filed. Although the Department has very broad discretion to reject future interest applications where it is in the public interest to do so under the terms of the statute quoted above and the regulations at 43 CFR 3111.3-1(a) (1987), the basis given by BLM for the decision to reject appellant's offer does not afford a viable basis for this action.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside and the case is remanded.

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C. Randall Grant, Jr.  
Administrative Judge

I concur:

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John H. Kelly  
Administrative Judge